IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 395

PITTSBURGH RAILWAYS COMPANY, Petitioner

v.

AMALGAMATED ASSOCIATION OF STREET ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, DIVISION 85, Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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To the Honorable, The Chief Justice
and the Associate Justices
Of the Supreme Court of the United States:

Respondent, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Division 85, opposes the granting of a writ to certiorari for the following reasons:

(1) The Federal question was not timely raised in the State Court, and this Court is, therefore, without jurisdiction in the matter.

(2) The Labor Management Relations Act of 1947 does not divest the Pennsylvania State Courts of jurisdiction to enforce agreements to arbitrate pursuant to the Pennsylvania Arbitration Act of 1927.

JURISDICTION

Petitioner asserts that jurisdiction to review the judgment of the Court below by writ of certiorari is conferred upon this Court by 28 U.S.C. § 1257(3). The facts set forth in the section of this Brief entitled "Statement of the Case" show that the Federal question that Petitioner seeks to have determined by this Court was raised for the first time in a petition for reargument filed in the Court below, and that the Court below did not grant said petition or otherwise pass upon the Federal question. For the reasons discussed in the section of this Brief entitled "Argument," the Federal question was not timely raised and this Court does not have jurisdiction under the aforesaid statutory provision.

THE QUESTIONS PRESENTED FOR REVIEW

An agreement between Petitioner and Respondent establishes a continuing, permanent pension plan, the terms of which may be changed by negotiations at periodic intervals. The agreement provides that if the parties are unable to agree upon proposed amendments to the plan the matters in issue shall be submitted to a Board of Arbitration to be selected in a specific manner designated in the agreement. When the parties, after extensive negotiations, were unable to agree upon proposed amendments to the plan, Respondent requested arbitration of the issues in dispute in accordance with the agreement. Petitioner refused to submit the issues to arbitration, and Respondent thereupon petitioned to compel arbitration under the Pennsylvania Arbitration Act of 1927, or, in the alternative, under the common law of Pennsylvania. The Court below affirmed an order of the Court of original jurisdiction directing Petitioner to proceed with arbitration under the Act of 1927. In a petition for reargument Petitioner, for the first time, contended

that the State Courts are without jurisdiction to enforce the arbitration agreement because of Section 301 (a) of the Labor Management Relations Act of 1947. The petition for reargument was denied by the Court below without opinion.

The initial question presented is: Was the Federal question raised in a timely fashion in the Court below and does this Court therefore have jurisdiction to grant a writ of certiorari?

If this question is answered in the affirmative, the remaining question is:

Does Section 301 (a) of the Labor Management Relations Act of 1947 oust the Pennsylvania State Courts of jurisdiction to enforce an agreement to arbitrate contained in a labor contract between an employer and a union in an industry affecting commerce where the petition to enforce said agreement is brought and granted pursuant to the Pennsylvania Arbitration Act?

STATEMENT OF THE CASE

In October of 1954, Respondent, the collective bargaining representative of Petitioner's employees, entered into an agreement with Petitioner which provided a system of retirement and disability benefits for employees of Petitioner. (R. 6a, 7a; App. A, p. 35)[1]

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[1] References designated as "R" are to the Record in the Court below. References designated as "App. A" are to Appendix A of the Petition before this Court, set forth at page 35 ff of said Petition and consisting of the Opinion of the Court below, and the Order of the Court below denying the Petition for Reargument

By its terms the aforesaid pension agreement was to be in effect from October 1, 1954 to April 30, 1957, and automatically thereafter for successive three-year periods, unless changed or amended as provided for in the agreement. (R. 7a; App. A, p. 35) In substance, the agreed-upon method of amending the pension plan required that notice of amendments desired by either party be served upon the other party within a specified time, and that if, after negotiations, no agreement could be reached on the proposed amendments, "the matter or matters in issue shall be submitted to a Board of Arbitration as hereinafter provided for upon the written request of either party." (R. 7a; App. A, pp. 35-36) The agreement then provided for the method of establishing the three-man Board of Arbitration, including a method of designating the neutral arbitrator in the event the two arbitrators named by the parties are unable to agree upon his selection. (R. 7a, 8a; App. A, p. 36)

The Respondent, on February 28, 1957, and the Petitioner, on March 1, 1957, each submitted written requests for amendments to the pension agreement; and during March and April of 1957, the parties met and negotiated with respect to those proposed amendments. (R. 9a, 25a, 32a; App. A, p. 36) No agreement could be reached, however, and on April 23, 1957 the Respondent requested in writing that the issues be submitted to arbitration in accordance with the agreement. (R. 9a, 11a; App. A, p. 36) On April 26, 1957 the Company replied to that request refusing to submit to arbitration the issues that had arisen over the proposed changes in the pension agreement. (R. 9a, 16a; App. A, p. 36)

Thereafter, on July 3, 1957, Respondent filed a Petition to Compel Arbitration in the Court of Common Pleas of Allegheny County, Pennsylvania, praying for an order directing Petitioner to proceed to arbitration in accordance

with the agreement. The prayer was predicated on two alternative grounds, *viz*: (1) Section 3 of the Pennsylvania Arbitration Act of 1927, P.L. 381 No. 248, 5 Purdon's Statutes 161 et seq (set out at page 6 of the instant Petition), and (2) common law priciples applicable in Pennsylvania. (R. 6a, 10a; App. A, p. 36) Thereupon the Court of Common Pleas entered an order directing the Company to show cause why arbitration should not proceed (R. 19a), and the Company filed an Answer and a Motion to Dismiss the Petition and to Discharge the Order To Show Cause. The Answer and the Motion To Dismiss (R. 20a, 21a,) were based upon the following contentions: (1) that the Pennsylvania Arbitration Act of 1927 is not applicable to labor agreements, (2) that the said Act does not apply to this case because the relief sought is "mandatory" in nature, (3) that the Act does not provide for the enforcement of an agreement to arbitrate changes in the terms of an agreement as distinguished from interpretations of an agreement, and (4) that if the Act is construed to be applicable to this case it would violate Petitioner's rights under Article I, Sections 11 and 17 of the Pennsylvania Constitution and under Amendment XIV, Section 1 of the United States Constitution.

On August 7, 1957 argument on the Respondent's petition and on the Petitioner's Answer and Motion To Dismiss was held before the Court of Common Pleas, and on October 30, 1957 that Court filed an opinion (R. 34a) holding that Respondent is entitled to an order under the Pennsylvania Arbitration Act of 1927 directing the Petitioner to proceed to arbitration. Consistent therewith, that Court entered an Order on the same date making the rule to show cause absolute. (R. 46a)

Thereafter, Petitioner appealed to the Supreme Court of Pennsylvania. In its Brief to that Court, Petitioner set

forth the following as it "Statement of Questions Involved":[2]

> "1. Does the Act of 1927 permit the granting of preliminary relief, viz., requiring the parties to arbitrate, when the ultimate relief, viz., a mandatory decree is not within its purview? Affirmed by the Court below.
>
> "2. Is the controversy sought to be arbitrated within the scope of such Act, where it provides for the enforcement of a provision in a written contract to settle by arbitration a controversy thereafter arising out of such contract? Affirmed by the Court below.
>
> "3. Is a labor agreement within the 'personal service contract' exclusion of the Act of 1927? Negatived by the Court below.
>
> "4. Is the agreement to arbitrate, which does not name the arbitrators, enforceable at comman law after it has been revoked by the Employer? Not answered by the Court below."

On May 26, 1958 the Supreme Court of Pennsylvania affirmed the Order of the Court of Common Pleas. In its Opinion (App. A, p. 35-39) the Court discussed the first three of the issues raised by Petitioner in its "Statement of Questions Involved" quoted above; it affirmed the decision of the Court of Common Pleas on each of said issues; and concluded that the arbitration agreement involved is enforceable under the Pennsylvania Arbitration Act of 1927. As such, the Court did not reach the issue of whether the agreement is also enforceable at common law in Pennsylvania.

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[2] Rule 35 of the Rules of the Supreme Court of Pennsylvania states that: "The statement of the question involved must set forth each question separately . . . This rule is to be considered in the highest degree mandatory, admitting of no exception; ordinarily no point will be considered which is not thus set forth in or necessarily suggested by the statement of the questions involved."

At no point in the litigation up to this point, spanning the period of almost a year, had the Petitioner contended directly or indirectly, that the Pennsylvania Courts were without jurisdiction over the controversy because of preemption by the Federal government under Section 301 of the Labor Management Relations Act of 1947. Indeed, Petitioner had raised no Federal question other than the contention that the Pennsylvania Act of 1927, if construed to apply to this controversy, would violate its rights under the 14th amendment of the Federal Constitution. And, as noted above, that issue, which was raised in the Answer and Motion to Dismiss in the Court of Common Pleas, was not raised or argued in the appeal to the Court below, and it has nothing to do with the question of Federal preemption as to which Petitioner seeks review by this Court. The Federal preemption issue—the argument that the Pennsylvania Courts are without jurisdiction to enforce agreements to arbitrate under Pennsylvania law in industries affecting commerce—was raised for the very first time in a Petition for Reargument filed with the Court below after its final decision of May 26, 1958. In response to that Petition for Reargument, Respondent argued, *inter alia*, that the contention as to exclusive Federal jurisdiction was untimely as it was never raised or argued in the Court of Common Pleas or in the appeal to the Court below. The Court below denied the Petition For Reargument on July 1, 1958 by a *Per Curiam* Order without opinion. (App. A, p. 39)

In the "Statement of The Case" section of its Petition the Petitioner asserts that the Respondent did not negotiate in good faith concerning the amendments to the pension agreement, and, on the basis of this assertion, Petitioner later attempts to fashion an argument of conflict between federal policy and the action of the Court below in enforcing the arbitration agreement. Suffice it to note that the record contains no evidence bearing upon this assertion other than the conclusionary statement in Petitioner's An-

swer. At no time did Petitioner attempt to introduce evidence before the Court of Common Pleas to support that assertion. That Court made no findings on the matter; in its appeal Petitioner did not complain of the lack of such findings; and nothing in the decision of the Court below passes upon the matter.

ARGUMENT

I. The Federal question was not timely raised in the Court below, nor was it considered by that Court, and this Court therefore lacks jurisdiction to review it.

The Federal question as to which Petitioner now seeks review involves the claim that the decision of this Court in *Textile Workers Union v. Lincoln Mills of Alabama*, 353 U. S. 448 compels the conclusion that the Federal government has preempted the field so that the Courts of Pennsylvania have no jurisdiction over any suit to enforce the arbitration provisions of a labor agreement involving an employer whose operations affect interstate commerce. The decision of this Court in *Lincoln Mills* was announced on *June 3, 1957*, and the initial hearing in the instant case before the Court of Common Pleas was not held until more than two months later on *August 7, 1957*. Yet, as noted above, in the Court of Common Pleas and in its subsequent appeal to the Pennsylvania Supreme Court, Petitioner confined its defense solely to the contention that, for various reasons, the Pennsylvania Arbitration Act is not broad enough to authorize enforcement of the arbitration agreement here involved. At no time did Petitioner challenge the jurisdiction of the Pennsylvania Courts on the basis of any claim of Federal preemption until its Petition for Reargument in the Court below, by which time that Court had rejected Petitioner's contentions as to the scope of the Pennsylvania Act and had held that Act applicable to the agreement here involved.

In an effort to claim that the Federal question had been raised at a point earlier than the Petition For Reargument, Petitioner asserts in its Petition (at pp. 10-11 thereof): (1) that in its Brief to the Court below it had "cited" the decision of the First Circuit Court of Appeals in *Boston Printing Pressmen's Union v. Potter Press*, 241 F. 2d. 787 (CA1), which concerned the question of whether agreements to arbitrate amendments to a labor contract are enforceable under the United States Arbitration Act and under Section 301 of the Labor Management Relations Act; and (2) that at the oral argument of the appeal to the Court below, and in a Memorandum submitted to that Court after the oral argument, Petitioner had "cited" the *Lincoln Mills* decision and had "also cited" a statement by Congressman Teller dealing with a Bill he had introduced to amend the United States Arbitration Act.

This strained attempt to show that the Federal question had been raised prior to the Petition for Reargument cannot succeed. In the first place, it is well established that briefs and oral argument in the Court below are not part of the record before this Court and cannot be relied upon to show that the Federal question had been timely raised. *Zadig v. Baldwin*, 166 U. S. 485, 488; *Live Oak Association v. Railroad Commission*, 269 U. S. 354; *Lynch et al. v. New York*, 293 U. S. 52. In any event, there was nothing in the briefs or oral argument to which Petitioner refers which even remotely raised the Federal question. All that Petitioner was trying to do, by the citations and quotations referred to, was to claim that the Federal statutes do not reach the enforcement of agreements to arbitrate amendments to a labor contract, and, from that claim, to argue that the Supreme Court of Pennsylvania should construe the *Pennsylvania* arbitration statute as likewise not covering that type of arbitration agreement. Petitioner has set forth the relevant portions of its post-argument memoran-

dum as Appendix B to its Petition. Reference to that document clearly shows that *Lincoln Mills* was cited only to explain what Congressman Teller was talking about in the quotation that is thereafter referred to. But nothing in that quotation has anything to do with the question of whether *Lincoln Mills* deprives State Courts of jurisdiction to enforce their own arbitration statutes. And nothing in Petitioner's memorandum suggests that Petitioner was even attempting to argue that the result of that decision, or of anything that Congressman Teller had to say about that decision, was that the State Courts were deprived of jurisdiction. As this Court has said:

> ". . . the jurisdiction of this court to reexamine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a Federal right." *Oxley Stave Company v. Butler County*, 166 U. S. 648, 655.

Even assuming, therefore, that the briefs and argument in question could properly be relied upon as a basis for jurisdiction, it is plain that they do not show that Petitioner had made a claim of the existence of a Federal question in such briefs or arguments in a manner that even begins to satisfy the tests this Court has required. The fact that the Court below did not pass upon any Federal question in its decision of May 26, 1958 was no oversight; no such question had been raised before it.

The Federal question was not raised by Petitioner until it filed its Petition for Reargument; and under the circumstances of this case it was at that point too late to confer jurisdiction on this Court.

This Court has often stated the general rule against the consideration of Federal questions that are raised for the

first time in a petition for reargument or rehearing in the court below:

Thus, in *Herndon v. Georgia*, 295 U. S. 441, 443, this Court said:

> "The long established general rule is that the attempt to raise a federal question after judgment, upon a petition for rehearing, comes too late, unless the court actually entertains the question and decides it . . ."

Similarly in *Bowe v. Scott*, 233 U. S. 658, 663, this Court noted:

> ". . . it is elementary that a mere assertion in a state court of a right under the Constitution of the United States in a petition for rehearing affords no grounds for invoking the jurisdiction of this court unless the court below in dealing with the petition for rehearing considers and passes upon the Federal ground therein relied upon . . ."

And, more recently in *Radio Station WOW v. Johnson*, 326 U. S. 120, 128 this Court stated:

> "Questions first presented to the highest State Court on a petition for rehearing come too late for consideration here, unless the State Court exerted its jurisdiction in such a way that the case could have been brought here had the questions been raised prior to the original disposition."

Many other decisions enunciate the same rule, e.g.:

Forbes v. State Council, 216 U. S. 396

American Surety Company v. Baldwin, 287 U. S. 156

Consolidated Turnpike Company v. Norfolk etc. Railway Company, 228 U. S. 326

McMillen v. Ferrum Mining Company, 197 U. S. 343

St. Louis and San Francisco RR Company v. Shepherd, 240 U. S. 240

Only two exceptions to the general rule have been made. The first, expressed in the foregoing quotations, is where the Court below grants the petition for rehearing and passes upon the Federal question raised. But even Petitioner does not claim that that is what occurred in this case. Here the Petition for Reargument was denied by an Order issued without opinion by the Court below on July 1, 1958 reading "Petition denied." This Court has often held that such a disposition of a petition for reargument does not reflect an intent on the part of the Court below to pass upon the Federal question raised by said petition so as to confer jurisdiction upon this Court. *Forbes v. State Council, supra; American Surety Company v. Baldwin, supra.*

The only other exception to the general rule is where the Court below injects into its decision a wholly unexpected ruling which gives rise to a Federal question, so that it can be said that the petition for reargument provided the first opportunity that existed in the litigation in the State Court to raise the Federal question. As this Court has expressed it, that exception arises where "the grounds of the decision [of the court below] supply a new and unexpected basis for a claim by the defeated party of the denial of a federal right." *Great Northern RR v. Sunburst Oil Company*, 287 U. S. 358, 367.

This is not such a case. Petitioner's statement (at p. 12 of its Petition) that the decision of the Court below "amounts to an overruling of an earlier decision of twenty years' standing in *Goldstein v. International Ladies' Garment Workers' Union*, 328 Pa. 385, 196 A 43, (1938)" is untrue. It could not be clearer from the Opinion of the Court below (See Appendix A of the Petition at p. 37) that the Court below distinguished the instant case from the situation presented in the earlier *Goldstein* decision and did *not* overrule that decision directly or indirectly. But

even if it had, and even if it could be said that the decision of the Court below was the first ruling by that Court applying the Pennsylvania Arbitration Act to the kind of facts presented by this case, it does not follow that Petitioner had no reason or occasion to raise the Federal issue earlier than its Petition for Reargument so as to fall within the exception now being discussed. As already noted, the *Lincoln Mills* decision of this Court was announced more than two months before the initial hearing in this case before the Court of Common Pleas. If an issue of Federal preemption was raised by that decision, it existed at that point, and could have been raised at that point, or certainly at the point of the Petitioner's appeal to the Court below. Yet Petitioner did not do so but chose instead to rely upon the claim that the Pennsylvania Act does not apply to the facts of this case. Its contentions in that regard had already been rejected by various decisions of lower Pennsylvania Courts, and if those contentions had not been ruled upon one way or the other by the Supreme Court of Pennsylvania, Petitioner had no right to assume that that Court would not also reject them.[3] Nothing contained in the decision of the Court below could be considered as injecting an "unexpected basis for a claim . . . of the denial of a federal right."

Accordingly, the general rule set forth above must

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[3] Thus, for example, Petitioner's contention that the Pennsylvania Arbitration Act does not apply to arbitration provisions of a collective bargaining agreement had been rejected in 1954 by the Court of Common Pleas of Northampton County in *International Ladies' Garment Workers' Union v. Nazareth Mills*, 87 D. and C. 589, a decision that was specifically approved by the Court below in its Opinion in the instant case. (See Appendix A of the Petition at p. 39.) Similarly, the ruling of the Court below that the provisions of the Act dealing with the enforcement of agreements to arbitrate are applicable irrespective of whether the arbi-

apply, and the raising of the Federal question in the Petition for Reargument must be considered as untimely. As such, this Court lacks jurisdiction to grant the writ of certiorari, and the Petition should be denied on that ground if no other.

II. The claim that the Federal Courts have exclusive jurisdiction to enforce agreements to arbitrate is without merit.

Respondent submits that apart from the fact that this Court lacks jurisdiction to grant the writ petitioned for in this case, the writ should be denied because there is no substance to the claim on which it is based, i.e., the claim that under the decision of this Court in *Lincoln Mills, supra*, the Pennsylvania Courts had no jurisdiction to enforce an arbitration agreement in a labor contract with an employer whose operations affect commerce in a suit brought under the Pennsylvania Arbitration Act.

In the *Lincoln Mills* decision this Court resolved a question on which the lower Federal Courts, prior thereto, had been almost equally divided. The question was this: Does Section 301 (a) of the Labor Management Relations Act, which gives Federal Courts jurisdiction (without regard to diversity of citizenship or the amount in contro-

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tration award might be "mandatory" in nature was in accord with a 1955 decision of the Court of Common Pleas of Allegheny County in *Amalgamated Association etc. v. Pittsburgh Railways Company*, 25 Labor Arbitration Reports 304. As to Petitioner's final contention, i.e., that the Act does not apply to agreements to arbitrate amendments to a contract, there were no Pennsylvania decisions on the point one way or the other, but there was ample precedent for the rejection of this contention in other jurisdictions including *United Electrical, Radio and Machine Workers of America, Local 111, C.I.O. v. National Pneumatic Co.*, 134 N.J.L. 349, 48 A 2d 295, which decision was specifically followed by the Court below. (See Appendix A of the Petition at p. 38.)

versy) over "suits for violation of contracts between an employer and a labor organization in an industry affecting commerce . . ." extend to suits to compel specific performance of a provision in such contracts requiring the arbitration of grievance disputes? This Court answered that question in the affirmative, and further concluded that "the substantive law to apply *in suits under § 301 (a)* is federal law which the courts must fashion from the policy of our national labor laws." (Emphasis added)

But from the fact that the Federal Courts have jurisdiction to enforce arbitration provisions in labor agreements it by no means necessarily follows that the States are thereby deprived of the power to enforce such agreements under the procedures and in the forums established by the State statutes dealing with this problem. As Petitioner concedes, Section 301 does not by its terms contain any indication that Congress intended to occupy the field and preclude the States from exercising jurisdiction over the enforcement of labor agreements. And the legislative history of that provision indicates that quite the opposite is true. In its decision in *Lincoln Mills* this Court reviewed that legislative history, noting that "a primary concern" of Congress was that "unions as well as employers should be bound by collective bargaining contracts," and that Congress was particularly concerned "with a procedure for making such agreements enforceable in the courts by either party" (353 U. S. 448 at p. 453.) Here the reference was to the fact that the laws of some states precluded suits against labor organizations, as unincorporated associations. This Court then noted that with reference to Section 301 the Senate Report (S. Rep. No. 105, 80th Cong. 1st Sess., p. 15) had stated: "We feel that the aggrieved party should *also* have a right of action in the Federal courts." (Emphasis added) Taken together these references strongly suggest that in conferring jurisdiction on the Federal Courts, Congress intended to supplement the causes of action and

remedies available under State law, and not to take away from the State Courts their traditional jurisdiction in the enforcement of contracts.

Respondent recognizes, of course, that Federal preemption may be found to have occurred even though Congress has not stated specifically that the Federal statute has occupied the field covered by its legislation. The tests for determining when such a conclusion must be reached were set forth by this Court in *Commonwealth of Pennsylvania v. Nelson*, 350 U. S. 497. None of those tests, however, are met in this case. It is not enough to say, as Petitioner's whole argument suggests, that since the matter covered by Section 301 deals with labor relations it follows from that fact alone that under the doctrine of *Garner v. Teamsters Union*, 346 U. S. 485 Congress has preempted the field covered by Section 301. For this Court has very recently noted:

> "As Garner v. Teamsters Union, 346 U. S. 485, could not help deciding, the Taft-Hartley Act undoubtedly carries implications of exclusive federal authority. Congress withdrew from the States much that had theretofore rested with them. But the other half of what was pronounced in Garner—that the Act 'leaves much to the States'—is no less important . . ." *International Association of Machinists v. Gonzales*, 356 U. S. 617.

We are not dealing here, as was true in cases such as *Garner*, with State legislation or action by a State Court that touches upon those matters (such as the prevention of conduct that Congress has designated as unfair labor practices or the determination of collective bargaining representatives in appropriate bargaining units) which Congress has left to the expertise of the National Labor Relations Board. We are dealing with the enforcement of contracts, and nothing but the clearest showing of Con-

gressional intent to occupy the field can suffice to support the conclusion that Congress intended to withdraw from the States their time-honored jurisdiction in this area.

Nor can preemption be spelled out, as Petitioner seeks to do, by conjuring up far-fetched possibilities of conflict between State action in enforcing arbitration agreements under State statutes and the action of the Federal Courts in enforcing such agreements under Section 301. The most that Petitioner has been able to say is that if the result reached by the First Circuit Court of Appeals in the *Potter Press* decision, *supra*, is ultimately accepted by this Court, Section 301 will not be available to enforce agreements to arbitrate amendments to an agreement. The fact, however, that such a remedy is available under the law in states like Pennsylvania does not bring the matter within the scope of the principle that State laws must yield when, as stated in the *Nelson* case, *supra*, their enforcement "presents a serious danger of conflict with the administration of the federal program." This Court in its recent decisions in *International Association of Machinists v. Gonzales*, *supra*, and in *International Union etc. v. Russell*, 356 U. S. 617 sustained State Court action, in the face of a claim of Federal preemption, where the potential threat of conflict between State and Federal policy was far greater than is ever likely to arise in a case, such as this, where a State Court enforces an arbitration agreement that may or may not also be enforceable under Federal law. In the *Gonzales* case this Court dealt specifically with a breach of contract suit for wrongful expulsion from a union. It sustained State Court action even though the conduct involved could constitute an unfair labor practice for which the NLRB might award back pay. Speaking for the majority, Mr. Justice Frankfurter stated:

> "If, as we held in the Laburnum case, certain state causes of action sounding in tort are not displaced

simply because there may be an argumentative coincidence in the facts adducible in the tort action and a plausible proceeding before the National Labor Relations Board, *a state remedy for breach of contract also ought not be displaced by such evidentiary coincidence when the possibility of conflict with federal policy is similarly remote.* The possibility of conflict from the court's award of damages in the present case is no greater than from its order that respondent be restored to membership. In either case the potential conflict is too contingent, too remotely related to the public interest expressed in the Taft-Hartley Act, to justify depriving state courts of jurisdiction to vindicate the personal rights of an ousted union member." (Emphasis added)

Respondent submits that this reasoning is fully applicable to the situation presented here, and requires the conclusion that Petitioner's contention that The Pennsylvania Courts were without jurisdiction to enforce the agreement here involved is wholly without merit.

This conclusion was recently reached in a well reasoned decision by the New York Supreme Court in *In re. Steinberg*, 40 Labor Relations Reference Manual 2619 (1957). In rejecting the argument made here by Petitioner, the Court stated:

"Respondent contends that it is engaged in interstate commerce and is therefore within the ambit of the Taft-Hartley Act (29 U. S. C., 151, et seq.), and that by recent decisions in the United States Supreme Court, federal legislation has preempted the state courts jurisdiction by placing exclusive jurisdiction over the collective contracts here invoked in the federal courts. Respondent cites the following cases as authority for its position: *Textile Workers v. Lincoln Mills* (353 U. S. 448, 25 Law Week 4387, 40 LRRM 2113), *Goodall-Sanford, Inc. v. United Textile Workers*, (353 U. S. 550, 25 Law Week 4390, 40 LRRM 2118), *General Electric Co. v. Local 205*, (353 U. S. 547,

25 Law Week 4391, 40 LRRM 2119). It has accordingly cross-moved here to dismiss this application and to dismiss the pending arbitration proceedings. . . .

"Study of the aforestated decisions convinces me that respondent's reliance thereon is untenable. All that the cited cases held was that the plaintiffs there were entitled to specific performance of the agreement to arbitrate and that the federal courts had the power to apply federal substantive law in determining the issue. The United States Supreme Court did not have before it, and therefore did not decide, the question whether the federal courts *alone* had jurisdiction to enforce the arbitration provision of collective bargaining agreements.

"The Supreme Court decisions and associated cases decided only that where parties engaged in interstate commerce resort to the federal forum, section 301 of the Labor Management Relations Act, 1947 (29 U.S.C.A. 185), confers jurisdiction, and as a result of such choice of forum the federal substantive law governs. *Nothing is indicated which leads to a conclusion that under such circumstances, federal jurisdiction is exclusive or that federal legislation has pre-empted the state courts of jurisdiction to enforce collective bargaining agreements when the matter is there presented* (see Rock Drilling Union v. Mason and Hanger Co., 217 F. 2d 687, 35 LRRM 2232 [C.C.A., 2d]; Signal-Stat Corp'n. v. Local 475, 235 F. 2d 298, 38 LRRM 2378 [C.C.A., 2d]; Shirley-Herman Co. v. Hod Carriers Union, 182 F. 2d 806, 26 LRRM 2258 [C.C.A., 2d]).

"*Were we to accept respondent's arguments here, the doctrine of supersession of state laws by federal laws would automatically apply whenever state and federal governments legislate in the same interstate field.*

"The circumstances under which such a doctrine would apply are outlined in Pennsylvania v. Nelson (350 U. S. 497) and Hines v. Davidowitz (312 U. S. 52).

"*Section 301 contains no specific or implied provision*

of federal preemption or have the federal courts disturbed the delicate balance of national and state relationships in this field by suggesting the application of the doctrine of federal supersession.

"When the Supreme Court desired to make it clear that federal legislation had preempted the field, it used language which left no doubt of its meaning (see Guss v. Utah Labor Relations Board, 353 U. S. 1, 25 Law Week 4212, 39 LRRM 2567; Amalgamated Meat Cutters v. Fairlawn Meats, 353 U. S. 20, 25 Law Week 4215, 39 LRRM 2571; San Diego Building Trades Council v. Garmon, 353 U. S. 26, 25 Law Week 4216, 39 LRRM 2574 [decided same term as Lincoln Mills]; Pennsylvania v. Nelson, supra; Weber v. Anheuser-Busch, 348 U. S. 468, 35 LRRM 2637; Garner v. Teamsters Union, 346 U. S. 485, 33 LRRM 2218; Hines v. Davidowitz supra).

"*I am persuaded that the application of the doctrine of federal supersession is unwarranted here and that a party having chosen a state forum is free to litigate the issue of compliance with arbitration in such forum* (See Application of Pocketbook Workers Union, 149 N.Y.S. 2d 56, 25 LA 807)." (Emphasis added)

See also: McCarroll v. Los Angeles County District Council of Carpenters, 315 P. 2d 322.

The Court's attention is also directed to the fact that in *Brooklyn Eagle Inc. v. Potoker*, No. 498, October Term, 1957, a Petition for a Writ of Certiorari was filed presenting the same questions here involved (including the question of whether the Federal question had been timely raised in the Court below). This Court denied that Petition on November 25, 1957 (26 Law Week 3164).

Finally, little need be said about Petitioner's related contention that even if the Pennsylvania State Courts have concurrent jurisdiction to enforce arbitration agreements

the rule of the *Lincoln Mills* decision requires that they apply Federal law and not State law to the matter. The principle enunciated in *Lincoln Mills* requires only that Federal law, as fashioned by the Federal Courts, be applied *in suits under Section 301.* This applies, of course, to suits brought in a Federal Court. And it would be equally applicable to suits brought under *Section 301* of the Federal Act in a State Court.[4] But nothing in *Lincoln Mills* leads to the conclusion that State Courts are prohibited from applying their own law regarding the enforcement of labor agreements where, as here, suit is brought under the State law.

CONCLUSION

For all of the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[4] It is not uncommon for State Courts to enforce Federal causes of action where Congress has not specifically indicated the contrary. *See: O'Donnel v. Great Lakes Dredge Dock Company,* 318 U. S. 36.